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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 691

RAILWAY MAIL ASSOCIATION,

Appellant,

against

EDWARD S. CORSI, AS INDUSTRIAL COMMISSIONER OF THE STATE OF NEW YORK, AND NATHANIEL L. GOLDSTEIN, AS ATTORNEY GENERAL OF THE STATE OF NEW YORK

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

NATHANIEL L. GOLDSTEIN,
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Counsel for Appellees.

ORRIN G. JUDD,
Solicitor General;
WENDELL P. BROWN,
First Assistant Attorney General;
HENRY S. MANLEY,
Assistant Attorney-General,
Of Counsel.

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Statute Cited

Civil Rights Law of the State of New York, Section 43, as enacted by L. 1940, c. 9 2

IN THE

SUPREME COURT OF THE UNITED STATES

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RAILWAY MAIL ASSOCIATION,

against *Appellant,*

EDWARD S. CORSI, AS INDUSTRIAL COMMISSIONER OF THE STATE OF NEW YORK, AND NATHANIEL L. GOLDSTEIN, AS ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Appellees.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

MAY IT PLEASE THE COURT:

Now come the appellees in the above entitled cause, by their counsel of record, and move that the appeal herein be dismissed, or that the order and judgment appealed from be affirmed.

Jurisdiction

Opinions of the courts below are reported as *Railway Mail Association* v. *Murphy*, 180 Misc. 868, 44 N. Y. S. 2d 601 (Spec. Term, Albany Co., Murray, J., Nov. 4, 1943), reversed, *Id.* v. *Corsi*, 267 App. Div. 470, 47 N. Y. S. 2d 404

(App. Div., 3rd Dept., Mar. 8, 1944), affirmed, *Id.* v. *Corsi*, 293 N. Y. 315 (Ct. Ap., July 19, 1944).

The appeal appears to be duly taken in point of time.

The questions involved are indicated by the opinions. Jurisdiction is asserted by the appellant upon the ground that the final judgment entered upon the decision of the highest state court was in favor of the constitutional validity of Section 43 and related provisions of the Civil Rights Law of the State of New York, as enacted by L. 1940, c. 9. As to this issue, the opinion of the Court of Appeals says:

> "There remains only the question whether a statute intended to restrict discrimination in membership by labor organizations is constitutional if applied to the plaintiff Association. The plaintiff does not challenge the validity of a statute which would prohibit such discrimination by 'labor organizations' to which the provisions of article 20 of the Labor Law apply. It challenges the validity of the statute, if construed in manner broad enough to include the plaintiff in its scope, on the ground that the exclusion of categories of workers from the application of article 20 and their inclusion in the application of section 43 would create 'arbitrary, capricious and unreasonable classifications' and would deny to the plaintiff organization the equal protection of law guaranteed by the Fourteenth Amendment of the Federal Constitution and would deny to the plaintiff due process of law. The plaintiff challenges the validity of the statute also on the ground that it constitutes an intrusion by the State into the field of postal service which under the Constitution is within the sole jurisdiction of the government of the United States.
>
> "The plaintiff in its brief makes abundantly clear the grounds upon which the Legislature might reasonably deny to civil service workers in the employ of a governmental unit the benefit of a statute intended

for the protection of the right of workers in other employment to bargain collectively with their employers. In its own official publications the plaintiff also makes abundantly clear the grounds upon which the categories of workers excluded from the application of the provisions of article 20 of the Labor Law may reasonably be included in the application of the provisions of the Civil Rights Law designed to give workers of every race, creed or color equality of opportunity to join organizations intended for collective action to improve the conditions of employment of the workers. In its official magazine, 'Railway Post Office,' the plaintiff published an article by its Industrial Secretary in which it said: 'Only through collective action have workers ever improved wage and working standards. And it is particularly true today that the worker either in industries or *the government service* who is not a member of his group organization is merely an unheard voice crying in the wilderness.' Whether or not these statements are wholly accurate is immaterial. At least they are not without foundation and the Legislature does not act arbitrarily or capriciously when it determines that no association of workers, whether in industry or in the civil service, which undertakes to speak and act collectively for such workers in improving wages and working standards may deny membership to a worker because of race, creed or color relegating him to the wilderness where he must cry unheard.

"The statute so construed does not impinge upon the powers of the Federal Government to conduct the mail service. The United States Government has recognized the right of mail clerks to organize for collective action in the presentation of grievances though not for collective bargaining. A statute in general terms which prohibits all labor organizations within this State, including organizations of workers in government service, from discriminating on the ground of race, creed or color violates no public policy of the

United States, does not interfere with or impede any government service and invades no field from which the State is excluded by the Constitution." (293 N. Y. at pp. 323-324; see also p. 318 where the plaintiff's contentions are stated.)

Motion to Dismiss or Affirm

The motion to dismiss or affirm is made upon the ground that the questions upon which jurisdiction is asserted are so unsubstantial as not to need further argument. This proposition is submitted upon the excerpts previously quoted from the opinion of the Court of Appeals.

Dated, October 25, 1944.

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